IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03/07/2003

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THE HONOURABLE MR.JUSTICE M. CHOCKALINGAM

CRL. APPEAL NO.1135 OF 2002

R. Shanmugam .. Appellant

-Vs-

State
rep. By Inspector of Police
Pothanoor
Coimbatore District
(Crime No.622 of 2002) .. Respondent

This criminal appeal is preferred under Section 374(2) of Cr.P.C. against the judgment, conviction and sentence awarded by the learned Additional District Sessions Judge (Fast Track Court No.2), Coimbatore in S.C.No.356 of 2001 dated 22.3.2002.

!For Appellant : Mr.K.N. Natarajan

^For Respondent : Mr.V.Jaya Prakash Narayan
Govt. Advocate (Crl. Side)

:JUDGMENT

Challenging the judgment of the learned Additional District Sessions Judge (Fast Track Court No.2), Coimbatore made in S.C.No.356 of 2001 , wherein the sole accused/appellant stood charged, tried and found guilty under Section 392 r/w 397 I.P.C. and sentenced to undergo 7 years R.I., this appeal has been filed by the appellant.

2. The short facts necessary for the disposal of this appeal can be stated as follows:
P.W.1, Dhilipkumar, is a resident of Nanjundapuram, Pothanoor, Coimbatore. On 27.10.2000 at about 6.45 p.m., when he was proceeding to his house in his scooter at Pothanoor Main Road, he was suddenly stopped by the accused. The appellant/accused showed M.O.2 knife and asked him to take money what he had. But, P.W.1 informed that he had no money. The accused forcibly snatched M.O.1 watch from his wrist. On hearing the alarm, P.Ws.2 and 3, who

witnessed the occurrence, made their attempt to chase the accused and tried to apprehend him, but they could not. P.W.1 went to Pothanoor Police Station at about 7.30 p.m. on the same day and lodged a complaint Ex.P.1, on the strength of which, P.W.6, Sub Inspector of Police, registered a case in Crime No.62 2 of 2000 under Section 392 r/w 506(ii) I.P.C. and prepared Ex.P.5, F.I.R. P.W.7, Inspector of Police took up investigation, proceeded to the spot at about 8.00 p.m. and prepared Ex.P.4 Observation Mahazar in the presence of the witnesses, namely, P.W.5 and one Rajavelu. He prepared Ex.P.6 Rough sketch also. He examined the witnesses and recorded their statements. On 28.10.2000 at about 5.30 a.m. he arrested the accused. The accused volunteered to give a confessional statement in the presence of the witnesses. Pursuant to the confessional statement given by the accused/appellant, he produced M.O.1 wrist watch and M.O.2 knife, which were recovered in the presence of the witnesses, namely, P.W.4 and one Paulraj under Ex.P.3 Mahazar. The accused was remanded to judicial custody and the M.Os were sent to the concerned court. On completion of investigation, P.W.7, Inspector of Police filed a charge sheet against the accused under Section 392 r/w 397 I.P.C. 3. In order to prove the case, the prosecution has examined 7 witnesses and marked 6 exhibits and 2 material objects. On completion of evidence on the side of prosecution, the accused was questioned under Section 313 of Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses, which the accused flatly denied as false. No defence witnesses were examined. The lower court, after consideration of the rival submissions and scrutiny of the materials available, has found the accused guilty under Section 39 2 r/w 397 I.P.C. and sentenced him to undergo imprisonment as stated above. Aggrieved appellant has brought forth this appeal.
4. Advancing arguments on the side of the appellant, the learned counsel raised following points:
P.W.1, who was the complainant, had not seen the accused earlier. P.W.1 has turned hostile. From the evidence of P.W.3, it would be clear that he could not have seen the accused, because he saw the accused running. No identification parade was conducted. The only evidence that was available for the prosecution was the recovery of M.Os., but the same has not been properly proved. Under the stated circumstances, the lower court should have rejected the prosecution case and acquitted the accused, and thus, the accused is entitled to for acquittal in the hands of this Court.

5. Countering to the above contentions of the appellant's side, the learned Government Advocate would submit that in the instant case, P.W.1, who was the owner of the property and P.W.3, who was eyewitness at the time of occurrence, has categoricall oken to about the occurrence fully narrating the incident. The prosecution has also adduced a strong piece of evidence through P.W.4, V.A.O to prove the recovery of M.Os. from the accused, and thus, the prosecution has clearly proved the case. The lower court was perfectly correct in finding the accused guilty, and hence, the judgment of the lower court has got to be sustained.
6. This Court paid its full attention on the rival submissions made and scrutinised the materials available. This Court is unable to see any substance in this appeal. 7. The gist of the prosecution case was that when P.W.1 was proceeding to his house in his scooter at Pothanoor Main Road, he was waylaid by the accused and at the knife point the appellant snatched

his wrist watch, which was marked as M.O.1. It is pertinent to point out that M.O.1 was clearly identified by P.W.1 when the same was produced before the trial Court. In his complaint also, P.W.1 has clearly mentioned the particulars about M.O.1 watch. In the instant case, P.W.2 has turned hostile, but the prosecution has rightly relied on the evidence of P.W.3. The contention of the appellant's side that P.W.3 could not have seen the occurrence cannot be accepted. In the instant cse, P.W.1 was waylaid by the accused, and the accused snatched his wrist watch. Under the stated circumstances, P.W.1 alone could easily identify the person, who committed the said crime. It is true that no identification parade was conducted, but the same would not in any way affect the case of the prosecution.

8. A strong piece of evidence what was available to the prosecution was the confessional statement made by the accused at the time of his arrest, pursuant to which, M.O.1, watch and M.O.2, knife were recovered from the accused in the presence of P.W.4 and the other witness under Ex.P.3 Mahazar. This aspect has been clearly spoken to by P.W.4 , V.A.O, whose evidence remains unshaken despite cross examination in full. The recovery of M.O.1 and M.O.2 from the accused pursuant to his confessional statement would clinchingly prove the nexus between the accused and the crime. In view of this part of the evidence coupled with the direct evidence through P.Ws.1 and 3, the lower court was perfectly correct in finding that the prosecution has brought home the guilt of the accused under Section 392 r/w 397 I.P.C. Coming to the question of sentence, the lower court has given a minimum sentence of 7 years R.I. under Section 392 r/w 397 I.P.C, which cannot be interfered with by this Court. Hence, the conviction and sentence imposed by the lower Court have got to be sustained.

9. In the result, this criminal appeal fails and the same is dismissed, confirming the conviction and sentence imposed by the lower court.

Index : Yes

Internet : Yes

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To
1. The Addl. District and Sessions Judge
(Fast Track Court No.2) Coimbatore
2. The Addl. District and Sessions Judge
(Fast Track Court No.2) Coimbatore
through the Principal District and Sessions Judge,
Coimbatore
3. The Superintendent, Central Prison, Coimbatore
4. The Public Prosecutor, High Court, Madras
5. The Dy. Inspector General of Police, Chennai-4
6. Mr.V.Jaya Prakash Narayan, Govt. Advocate(Crl. Side)
High Court, Madras
7. The Inspector of Police, Pothanoor
Coimbatore District

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